

UNITED STATES DISTRICT COURT

Eastern District of Massachusetts

Heather Kiernan,
 plaintiff

DOCKET NO.
1:04CV10131- RBC

V.

Armored Motor Service
of America, Inc., and
Francesco Ciambriello,
 defendants

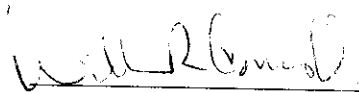
MOTION FOR PROTECTIVE ORDER

The Office of the Bristol County District Attorney, a non-party to this action, hereby requests, pursuant to F. R. Civ. P. 26(c), and 45(c)(3) (A)(iii), that this Court enter a protective order in its favor (1) quashing the plaintiff's subpoena duces tecum (attached hereto as "Exhibit A") inasmuch as it requires production of documents disclosing investigatory materials; materials disclosing the deliberations, work product, mental impressions, opinions, legal theories and conclusions of the District Attorney's office; materials available to the plaintiff by other means, and (2) quashing the subpoena (attached hereto as "Exhibit B") inasmuch as it requires the Office to appear and testify at a deposition. In support of this motion, the Office of the Bristol County District Attorney submits the accompanying Memorandum of Law.

Local Rule 7.1(A)(2) Certificate

The undersigned attempted to confer with counsel for plaintiff in good faith on November 1, 2004 but failed to narrow the issues raised by this motion.

Respectfully submitted,
Office of the Bristol County
District Attorney

A handwritten signature in dark ink, appearing to read 'William R. Connolly', is written over a horizontal line.

William R. Connolly
Assistant District Attorney
Bristol District
P.O. Box 973
888 Purchase Street
New Bedford, MA 02741
(508) 997-0711

Issued by the
UNITED STATES DISTRICT COURT

DISTRICT OF Massachusetts

Heather Kiernan

V.

SUBPOENA IN A CIVIL CASE

**Amored Motor Service of America and
Francesco Ciambriello**

CASE NUMBER: ¹

04-10131 RBC

TO: **KEEPER OF THE RECORDS, OFFICE OF THE BRISTOL COUNTY DISTRICT ATTORNEY
888 Purchase Street, New Bedford, MA 02740**

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

McLeod Law Offices, PC, 77 Franklin Street, Boston, MA 02110

12-03-04/10:00a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see attached Notice of Deposition which is incorporated herein as if fully set forth.

PLACE

McLeod Law Offices, PC, 77 Franklin Street, Boston, MA 02110

DATE AND TIME

12-03-04/10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

10-18-04

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

**William J. McLeod, McLeod Law Offices, PC., 77 Franklin Street, Boston, MA 02110
(617) 542-2956, Counsel for the Plaintiff**

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 **COPY**

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL ACTION NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF
AMERICA, INC. and
FRANCESCO CIAMBRIELLO,

Defendants.

NOTICE OF DEPOSITION

TO: Robert Joy	David Ardito
Alison Romantz	Bisio & Dupont Building
Laurence Donoghue	228 County Street
Morgan Brown & Joy, LLP	Attleboro, MA 02703
One Boston Place	
Boston, MA 02108	

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the Plaintiff in the above captioned matter, by and through her counsel, shall take the deposition upon oral examination of the Keeper of the Records of the Office of the Bristol County District Attorney, 888 Purchase Street, New Bedford, Massachusetts on Monday, December 3, 2004 at 10:00 a.m. at the offices of Plaintiff's counsel, William J. McLeod, McLeod Law Offices, P.C., 77 Franklin Street, Boston, MA 02110.

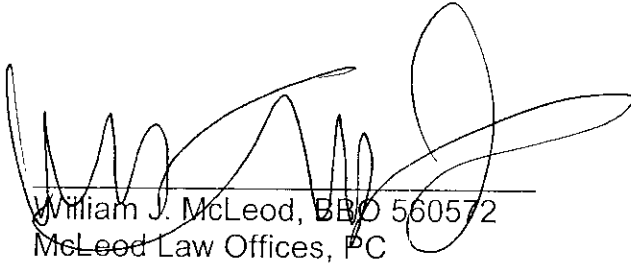
The witness is instructed to bring with him/her the documents listed on Schedule A.

The deposition shall continue from day to day until completed.

You are invited to attend and cross-examine.

THE PLAINTIFF,
Heather Kiernan

DATED: October 18, 2004



William J. McLeod, BBO 560572
McLeod Law Offices, PC
77 Franklin Street
Boston, MA 02110
617-542-2956/phone
617-695-2778/fax

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

1. For the purposes of these requests, the following definitions shall apply to the following terms:

- a. "communication" - shall mean the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);
- b. "document" refers to all written or graphic matter (whether prepared by the Bristol County District Attorney's Office or not) however produced or reproduced, in your actual or constructive possession, including documents accessible to you upon your request and/or from your agents, servants, employees, and trustees (actual or constructive), including but not limited to originals (or copies where originals are unavailable) of: correspondence, accounts, microfilm, e-mail, telegrams, notes, minutes of any meetings, memoranda,

inter- or intra-office communications, reports, contracts, agreements, ledgers, books of account, bank passbooks, bank check books, and bank statements, deeds, real estate statements or accounts, bank deposit slips, promissory notes, mortgages. It is further expanded to include any materials stored through magnetic and electronic means (e.g. computer disk, tape, CD, CD-ROM, etc.). It is even further expanded to include photographs, digital images, and video and audio recordings of any kind.

- c. "concern" or any derivative thereof including "relate to" or "pertain to" mean to refer to, relevant to, mentioned, discussed, evidence of, indicate, support, or in any way whatsoever having bearing upon a described subject and shall mean referring to, describing, mentioning, evidencing or constituting.
- d. All requests herein call for ALL DOCUMENTS and other materials as is requested which is in your actual or constructive possession wherever said documents or other materials may be located, whether in your personal possession, at your residence, at any of your business locations or those of your agents, servants, employees, trustees, or relatives, or other location, and regardless of whether such documents pertain to your personal or business affairs and regardless of whether involving you in your individual capacity, as an agent or officer of a business entity of which you are an employee or in which you have an equity or proprietary interest either actual or constructive, or

in which you have a beneficial interest.

- e. For the purposes of this Notice, the term "you" or "your" or any derivative thereof shall mean the Bristol County District Attorney's Office its agents, directors, shareholders, subsidiaries and employees as well as any other names entity under which the Bristol County District Attorney's Office conducts its affairs.

2. You are required to produce either originals or confirmed copies of each document requested.

3. In the event that a document responsive to any request is claimed to be privileged, each such privileged document should be identified in writing by providing the following information:

- a. the date on which the document was prepared;
- b. the author or authors of said document;
- c. the addressee(s) of the document, if any;
- d. the number of pages;
- e. the location(s) of the document; and
- f. a brief description of the substance thereof sufficient to allow the Court to determine the validity of the privilege claim.

4. If no documents exist in response to a numbered request, please state that no documents exist.

5. Unless specifically indicated otherwise, all documents are requested for the period from January 1, 2001 up to and including the present time, including any documents having earlier origin and in use during the above-specified time period.

AREAS OF INQUIRY

1. All documents that that concern or relate to the matter of Commonwealth of Massachusetts v. Francesco Ciambriello, Indictment No. BRCD 2002-0773, which constitute the following:
 - a. Copies of all evidence logs;
 - b. Copies of all subpoenas served on witnesses at any stage of the proceeding including but not limited to trial and pre-trial matters;
 - c. Copies of any and all returns of service for all subpoenas served on witnesses at any stage of the proceeding including but not limited to trial and pre-trial matters;
 - d. Copies of any and all documents that mention, refer to, describe, or reference in any way to the videotapes that are alleged to have disappeared in the above referenced criminal matter including but not limited to, all individuals who saw the tapes; all individuals who took custody and/or possessed the tapes; all documents, including evidence logs that mention or in any way refer to the tapes, and correspondence, memoranda and other communications (verbal and written) concerning the subject tapes including all steps taken to determine the whereabouts of these tapes.

- e. Copies of any and all documents that mention, refer to, describe, or reference any and all investigations conducted into the videotapes that are alleged to have disappeared in the above referenced criminal matter including but not limited to, all individuals who saw the tapes; all individuals who took custody and/or possessed the tapes; all documents, including evidence logs that mention or in any way refer to the tapes, and correspondence, memoranda and other communications (verbal and written) concerning the subject tapes including all steps taken to determine the whereabouts of these tapes.

Issued by the

UNITED STATES DISTRICT COURT

DISTRICT OF Massachusetts

Heather Kiernan

V.

Armored Motor Service of America and
Francesco Ciambriello

SUBPOENA IN A CIVIL CASE

CASE NUMBER: ¹

04-10131 RBC

TO: OFFICE OF THE BRISTOL COUNTY DISTRICT ATTORNEY
888 Purchase Street, New Bedford, MA 02740☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

McLeod Law Offices, P.C., 77 Franklin Street, Boston, MA 02110
(Please refer to the attached Notice of Deposition)

12-06-04/10:00 a.m.

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

10-18-04

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

William J. McLeod, McLeod Law Offices, PC 77 Franklin Street, Boston, MA 02110
Counsel for the Plaintiff

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

"EXHIBIT B"

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 **COPY**

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL ACTION NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF
AMERICA, INC. and
FRANCESCO CIAMBRIELLO,

Defendants.

NOTICE OF DEPOSITION

TO: Robert Joy	David Ardito
Alison Romantz	Bisio & Dupont Building
Laurence Donoghue	228 County Street
Morgan Brown & Joy, LLP	Attleboro, MA 02703
One Boston Place	
Boston, MA 02108	

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the Plaintiff in the above captioned matter, by and through her counsel, shall take the deposition upon oral examination of the Office of the Bristol County District Attorney, 888 Purchase Street, New Bedford, Massachusetts on Monday, December 6, 2004 at 10:00 a.m. at the offices of Plaintiff's counsel, William J. McLeod, McLeod Law Offices, P.C., 77 Franklin Street, Boston, MA 02110.

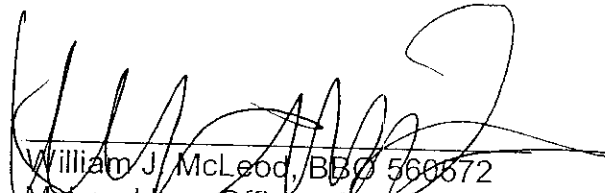
The Office of the Bristol County District Attorney shall designate one or more representatives to testify as to the areas of inquiry listed on Schedule A.

The deposition shall continue from day to day until completed.

You are invited to attend and cross-examine.

THE PLAINTIFF,
Heather Kiernan

DATED: October 18, 2004



William J. McLeod, BBO 560572
McLeod Law Offices, PC
77 Franklin Street
Boston, MA 02110
617-542-2956/phone
617-695-2778/fax

SCHEDULE A

AREAS OF INQUIRY

1. The matter of Commonwealth of Massachusetts v. Francesco Ciambriello, Indictment No. BRCD 2002-0773, including but not limited to the following:
 - a. The names and addresses of all witnesses who were interviewed by the District Attorney's Office, or at their direction in furtherance of the investigation of the facts and allegations in the matter;
 - b. The names and addresses of all individuals who were subpoenaed to testify during any portion of the above proceedings including but not limited to motion hearings and the trial;

- c. The evidence obtained by the District Attorney's office in the prosecution of the above matter, including but not limited to, any and all videotapes and/or other visual depictions of the Defendant in the above matter, or the Plaintiff in the above matter, including all steps taken to procure this evidence.
- d. Any and all investigations conducted into the videotapes that are alleged to have disappeared in the above referenced criminal matter including but not limited to, all individuals who saw the tapes; all individuals who took custody and/or possessed the tapes; all documents, including evidence logs that mention or in any way refer to the tapes, and correspondence, memoranda and other communications (verbal and written) concerning the subject tapes including all steps taken to determine the whereabouts of these tapes.
- e. Any and all interrogations of the Defendant Francesco Ciambriello at any time prior to or after his arrest.
- f. Any and all discussions, interviews and/or questioning of any employee and/or former employee and/or agent of the Defendant Armored Motor Service of America, Inc.